

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICKY A. HOTZ,

Petitioner,

v.

GUY PIERCE,

Respondent.

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Case No.: 08-cv-00850-DRH-DGW

ORDER

Currently pending before the Court is Petitioner's Motion Opposing the Court's Order of Denial for a Stay and Requesting Leave for Reconsideration and Reinstatement on-of the Request for a Stay and Abeyance (Doc. 29). Petitioner seeks reconsideration of the Court's Order denying his request for stay and abeyance (Doc. 28). In support, Petitioner states that he intends on filing a successive post-conviction petition and requests that the Court stay his federal habeas petition while he exhausts his state court remedies.


As explained in the Court's Order (Doc. 28), a stay and abeyance is appropriate only where a petitioner has had filed a "mixed" habeas petition including both exhausted and unexhausted claims. *Rhines v. Weber*, 544 U.S. 269, 277 (2005). Petitioner, however, has not filed a mixed petition. His petition contains claims that were properly exhausted in state court. Therefore, Petitioner is not entitled to a stay and abeyance. *See Harper v. Shaw*, No. 08-CV-2293, 2009 WL 2843247, at *4 (C.D. Ill. August 7, 2009)(petitioner was not entitled to a stay because he did not file a mixed habeas petition).

Once Petitioner files a successive post-conviction petition in state court, he may then request a motion for stay and abeyance of his federal habeas petition.

For the reasons stated above, Plaintiff's Motion (Doc. 29) is **DENIED**.

IT IS SO ORDERED.

DATED: March 30, 2011



DONALD G. WILKERSON
United States Magistrate Judge